

IN THE UNITED STATES DISTRICT COURT  
FOR THE WESTERN DISTRICT OF PENNSYLVANIA

MARK E. FIX,	)	
	)	
Plaintiff,	)	
	)	CIVIL ACTION NO. 04-97E
v.	)	
	)	JUDGE COHILL
UNITED STATES OF AMERICA,	)	MAGISTRATE JUDGE BAXTER
UNITED STATES BUREAU OF PRISONS,	)	
	)	
Defendants.	)	

**ANSWER AND AFFIRMATIVE DEFENSES**

AND NOW comes Defendant, United States of America, by and through its attorneys, Mary Beth Buchanan, United States Attorney for the Western District of Pennsylvania and Michael C. Colville, Assistant United States Attorney for said District, and files the following Answer to Plaintiff's Complaint:

**FIRST DEFENSE**

1-2. The averments contained in paragraphs 1 and 2 are admitted in part and denied in part. It is admitted that Plaintiff has filed a FTCA claim and has named the United States as a proper Defendant. It is denied that the Bureau of Prisons is a proper Defendant in an FTCA case.

3. The averment contained in paragraph 3 is denied.

4. The averment contained in paragraph 4 is admitted.

5. The averment contained in paragraph 5 is a conclusion of law to which a response is not required. However, to the extent a response is deemed necessary, said averment is admitted.

6. The averment contained in paragraph 6 is admitted.

7. The averment contained in paragraph 7 is a conclusion of law to which a response is not required. However, to the extent a response is deemed necessary, said averment is denied.

8-9. Defendant is without knowledge or information sufficient to form a belief as to the truth of the averments contained in paragraphs 8 and 9. As such, said averments are denied.

10-12. The averments contained in paragraphs 10 through 12 are admitted.

13-14. Defendant is without knowledge or information sufficient to form a belief as to the truth of the averments contained in paragraphs 13 and 14. As such, said averments are denied.

15. The averment contained in paragraph 15 is admitted.

16. Defendant is without knowledge or information sufficient to form a belief as to the truth of the averments contained in paragraph 16. As such, said averment are denied.

17. The averment contained in paragraph 17 contains conclusions of law to which a response is not required. However, to the extent a response is deemed necessary, said averment is denied.

18. Defendant is without knowledge or information sufficient to form a belief as to the truth of the averment contained in paragraph 18. As such, said averment are denied.

19. The averments contained in paragraph 19 are admitted in part and denied in part. It is admitted that Plaintiff received medication from Defendant for possible Lyme Disease. Defendant is without knowledge or information sufficient to form a belief as to the truth of the remaining averments contained in paragraph 19. As such, said averment are denied.

20. Defendant is without knowledge or information sufficient to form a belief as to the truth of the averment contained in paragraph 20. As such, said averment are denied.

21-22. The averments contained in paragraphs 21 and 22 are admitted. However, Plaintiff was also diagnosed as having possible Lyme Disease.

23. Defendant is without knowledge or information sufficient to form a belief as to the truth of the averment contained in paragraph 23. As such, said averment are denied.

24. The averment contained in 24 is denied.

25-27. The averments contained in paragraphs 25 through 27 contain conclusions of law to which a response is not required. However, to the extent a response is deemed necessary, said averments are denied.

#### **SECOND DEFENSE**

28. Plaintiff has failed to timely exhaust his administrative remedies.

Respectfully submitted,

MARY BETH BUCHANAN  
United States Attorney

s/ Michael C. Colville  
MICHAEL C. COLVILLE  
Assistant U.S. Attorney  
Western District of PA  
U.S. Post Office & Courthouse  
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**CERTIFICATE OF SERVICE**

I hereby certify that on this 18<sup>th</sup> day of October, 2005,  
a true copy of the foregoing ANSWER AND AFFIRMATIVE DEFENSES was  
served electronically and/or by first-class mail to the following:

Lawrence D. Kerr, Esquire  
BERK, WHITEHEAD, CASSOL,  
FELICIANI & KERR  
115 North Main Street  
Greensburg, PA 15601

s/ Michael C. Colville  
MICHAEL C. COLVILLE  
Assistant U.S. Attorney